IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2402 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD ADVANCE MILLS LTD

Versus

GANESHBHAI JIVRAJBHAI

Appearance:

1. Special Civil Application No. 2402 of 1992

MR KEYUR GANDHI for KS NANAVATI for Petitioner

MR DS VASAVADA for Respondent No. 2

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 23/12/2002

ORAL JUDGEMENT

By filing instant petition under Articles 226 &

227 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash order dated February 28, 1992, passed by the Labour Court, Ahmedabad, in Recovery Application No. 1847/1980, by which the petitioner is directed to pay a sum of Rs.7,600/- to the respondent No.1 as retrenchment compensation.

2. The respondent No.1 was appointed in the Weaving Department of the petitioner-Mills in the year 1940. In accordance with the agreement dated July 12,1980 entered into between the petitioner and the Textile Labour Association, which is impleaded as respondent No.2 in the petition, the respondent No.1-workman had submitted his resignation through the respondent No.2-Union on July 17, 1980. After acceptance of the same, the respondent No.1 was issued relieving order on the same day and paid all his dues as per the formula agreed upon between the petitioner and the 2nd respondent. However, the 1st respondent-workman instituted a recovery application for claiming full amount of retrenchment compensation as per the provisions of the Industrial Disputes Act,1947. It was registered as Recovery Application No. 1847/1980. On service of notice, the petitioner had filed reply controverting the same. However, the Labour Court, Ahmedabad by order dated February 28, 1992 directed the petitioner to pay a sum of Rs. 7,600/- to the respondent No.1 as retrenchment compensation, giving rise to the present petition.

3. I have heard Mr.Keyur Gandhi, learned advocate appearing for the petitioner and Mr.D.S.Vasavada, learned counsel of the respondent No.2. Though the respondent No.1 is duly served, he has neither appeared in person nor through an advocate.

4. In M/s.J.K.Cotton Spg.& Wvg.Mills Company Ltd. Kanpur v. State of U.P. and others, AIR 1990 SC 1808, the Supreme Court has ruled that when an employee voluntarily tenders his resignation, it is an act by which he voluntarily gives up his job and acceptance of the resignation would not amount to retrenchment. Here in instant case, the Labour Court has recorded a finding of fact that the respondent No.1 had voluntarily resigned from service. Acceptance of the same by the petitioner could not have been treated as retrenchment by the Labour Court in view of the principle laid down in M/s.J.K.Cotton Spg.& Wvg.Mills Co.Ltd. (supra). Therefore, the impugned order is liable to be set aside.

5. For the foregoing reasons, the petition succeeds.

The order dated February 28, 1992, passed by the Labour Court, Ahmedabad, in Recovery Application No. 1847/1980 directing the petitioner to pay a sum of Rs. 7,600/- to the respondent No.1 as retrenchment compensation is set aside. Rule is made absolute. There shall be no order as to costs. The amount of Rs. 7,600/-(Rupees Seven Thousand Six Hundred only) deposited by the petitioner in the Registry of this Court shall be refunded to the petitioner with accrued interest thereon, if any, after following the procedure of law.

(J.M.Panchal,J.)

(patel)